



Republic of the Philippines
Supreme Court
Baguio City

SUPREME COURT OF THE PHILIPPINES
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SPOUSES PEPITO AND
PRESCILA FRIAS,
Complainants,

A.C. No. 12467
[Formerly CBD Case No. 16-5072]

Present:

BERSAMIN, C.J.,
CARPIO,
PERALTA,
DEL CASTILLO,*
PERLAS-BERNABE,**
LEONEN,
JARDELEZA,*
CAGUIOA,
REYES, A., JR.,
GESMUNDO,
REYES, J., JR.,
HERNANDO,
CARANDANG, and
LAZARO-JAVIER, JJ.

- versus -

ATTY. NELLY E. ABAO,
Respondent.

Promulgated:

April 10, 2019

x-----x

DECISION

PERALTA, J.:

Before us is a Complaint¹ for Disciplinary Action dated September 1, 2016 filed by the spouses Pepito Frias and Prescila Chavez Frias (*Spouses Frias*) against respondent Atty. Nelly E. Abao (*Atty. Abao*) for violation of Rule 1.01 and Rule 10.01 of the Code of Professional Responsibility and of the Notarial Law.

* On wellness leave.
** On leave.
¹ *Rollo*, pp. 2-5.

The facts are as follows:

Complainant Pepito Frias, married to Prescila Chavez, is the registered owner of a parcel of land known as Lot No. 3270-A, Psd-06-000781, situated at Barangay Malonoy, Dao, Capiz, covered by Transfer Certificate of Title (*TCT*) No. T-14354 (subject property).

The Spouses Frias narrated that in early 1900s, Susana Frias, their daughter, was enduring a heart disease. Because of financial difficulties, they accepted the offer of one of their daughters who was then residing in Mindanao, to bring Susana to Davao for treatment. Before they left, the Spouses Frias asked Rodrigo Arbiz, and his wife, Maria, the parents of Jermehilda Escutin, if they could lend them money to cover for their transportation to Mindanao and the medical expenses of Susana. Although the Spouses Arbiz agreed to lend them some money, they demanded that the Spouses Frias secure the loan with the subject property, for twenty years.

Because the Spouses Frias were unsure of their capacity to pay back the loan in time, and were afraid they might lose the subject property if they failed to settle the loan, they allegedly offered instead to lease the property to the Spouses Arbiz, instead of mortgaging it to them.

Rodrigo Arbiz allegedly accepted the offer to lease the subject property, and gave them the amount of ₱340,000.00. Both parties agreed that: (1) the Spouses Frias would not have any obligation to give back the amount of ₱340,000.00 to Rodrigo Arbiz; (2) Rodrigo Arbiz and his wife would possess the subject property for twenty years, that is from January 16, 1995 to January 16, 2015, and enjoy the use and produce of the land; (3) Rodrigo Arbiz and his wife would be responsible to pay for the real estate taxes due on the property because it would be difficult for the Spouses Frias to pay them while they were in Mindanao; (4) the Spouses Frias would not disturb Rodrigo Arbiz and his wife's possession of the property until after the expiration of twenty years; and (5) the Spouses Frias would entrust the original owner's duplicate copy of *TCT* No. T-14354 that covers the subject property to Rodrigo Arbiz and his wife. These agreements, however, were not put into writing as it was the usual practice those days.

On January 16, 1995, the Spouses Frias left for South Cotabato, leaving whatever they owned in Capiz. Despite all medical treatments they could afford with their savings, Susana died in 2000 in South Cotabato.

Sometime in 2000, the Spouses Frias learned that Rodrigo Arbiz died. Later, in 2005, they also learned that Rodrigo Arbiz's wife, Maria, also died.



They discovered that the heirs of the Spouses Arbiz, Jermehilda Escutin and Danilo Escutin, took possession of the subject property.

The Spouses Frias alleged that even after the death of the Spouses Arbiz, they could not return to Dao, Capiz because they respected the alleged lease agreement. After the expiration of the lease contract, they decided to return to Capiz, and claim the subject property as they believed to be entitled thereto. However, the Spouses Escutin refused to turnover the possession of the subject property. Thus, the Spouses Frias filed a complaint for ejectment against the Spouses Escutin.

In their Answer, the Spouses Escutin argued that the subject property was sold to their parents by the Spouses Frias. They attached a copy of the Deed of Absolute Sale dated July 11, 1995 purportedly executed by complainants in favor of the parents of the Spouses Escutin.²

The Deed of Absolute Sale was notarized by herein respondent Atty. Abao on July 11, 1995, as document no. 106, found on page 23, Book No. LVIX.³ However, the Spouses Frias insisted that they did not execute any document of conveyance of the said parcel of land to anybody. They claimed that it was impossible for them to execute the said Deed of Absolute Sale on July 11, 1995 because at that time they already left for Mindanao and never came back to Dao, Capiz, until April 4, 2015.

The Spouses Frias then searched for an original copy of the deed of absolute sale with the Clerk of Court of Roxas City. The Clerk of Court of Roxas City, Atty. Jelou F. Almalbis-Laguna, issued a Certification⁴ dated November 3, 2015 stating that the deed of absolute sale executed by Pepito Frias and Prescila Frias in favor of Rodrigo Arbiz and Maria L. Arbiz under Doc. No. 106, Page 23, Book No. LVIX dated July 11, 1995 and notarized by Atty. Abao does not exist. It further certified that respondent Atty. Abao was never commissioned as Notary Public in the City of Roxas, Province of Capiz for the year 1995 and had no notarial files on record for the same year.⁵

The Spouses Frias, likewise, lamented that while Atty. Abao admitted that she notarized the Deed of Absolute Sale purportedly executed by them, she, however, made false statements in her Judicial Affidavit⁶ dated July 28, 2016 wherein she alleged that: (1) Pepito Frias was present when she notarized the said document; (2) Prescila Frias was present when she

² *Id.* at 28.

³ *Id.*

⁴ *Id.* at 29.

⁵ *Id.*

⁶ *Id.* at 30-32

notarized the Deed of Absolute Sale; and (3) Pepito Frias and Prescila Frias affixed their signatures in the said Deed of Absolute Sale.⁷

Thus, the instant administrative complaint against Atty. Abao for violation of Rule 1.01 of Canon 1 and Rule 10.01 of Canon 10 of the Code of Professional Responsibility (*CPR*).

On October 3, 2016, the Integrated Bar of the Philippines-Commission on Bar Discipline (*IBP-CBD*) ordered Atty. Abao to submit her answer to the complaint against her.⁸

In her Answer⁹ dated November 14, 2016, Atty. Abao admitted that she notarized the subject Deed of Absolute Sale without the necessary notarial commission to do so. She offered no valid excuse for her unauthorized notarial act. She denied having notarized a fictitious deed of absolute sale, and maintained that complainants personally appeared and signed the subject Deed of Absolute Sale before her.

Meanwhile, on November 29, 2016, the complaint for unlawful detainer filed by the Spouses Frias against the Spouses Escutin, docketed as Civil Case No. V-376, was dismissed.¹⁰

In its Report and Recommendation¹¹ dated September 19, 2017, the IBP-CBD found Atty. Abao liable for notarizing documents without a notarial commission and for executing an untruthful judicial affidavit. For notarizing a document without commission, the IBP-CBD recommended that Atty. Abao be suspended from the practice of law for six (6) months, and that if she is presently commissioned as notary public, she be disqualified from being commissioned as notary public for a period of two (2) years. Further, for executing an untruthful judicial affidavit and testifying thereon, the IBP-CBD, likewise, recommended a penalty of suspension from the practice of law for a period of one (1) year.

In a Resolution¹² dated June 29, 2018, the IBP-Board of Governors adopted and approved the Report and Recommendation of the IBP-CBD on the recommended penalty.

⁷ *Id.*
⁸ *Id.* at 47.
⁹ *Id.* at 48-50.
¹⁰ *Id.* at 60-65.
¹¹ *Id.* at 96-102.
¹² *Id.* at 94-95.



RULING

We agree with the findings of the IBP-CBD, except as to the recommended penalty.

Time and again, this Court has stressed that notarization is not an empty, meaningless and routine act. It is invested with substantive public interest that only those who are qualified or authorized may act as notaries public.¹³ It must be emphasized that the act of notarization by a notary public converts a private document into a public document making that document admissible in evidence without further proof of authenticity. A notarial document is by law entitled to full faith and credit upon its face, and for this reason, notaries public must observe with utmost care the basic requirements in the performance of their duties.

In the present case, it is undisputable that Atty. Abao performed notarial acts on the subject deed of absolute sale knowing fully well that she was without a valid notarial commission. Her lack of notarial commission at the time of the unauthorized notarization was likewise sufficiently established by the Certification issued by Atty. Jelou F. Almalbis-Laguna, Clerk of Court VI of the Office of the Clerk of Court, Regional Trial Court, 6th Judicial Region, Roxas City in the territory where Atty. Abao performed the unauthorized notarial act.¹⁴ Clearly, Atty. Abao could not perform notarial functions in Dao, Capiz, since she was not commissioned in the said places to perform such act in the year 1995.

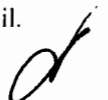
Under the 2004 Rules on Notarial Practice, a person commissioned as a notary public may perform notarial acts in any place within the territorial jurisdiction of the commissioning court for a period of two (2) years commencing the first day of January of the year in which the commissioning is made. Commission either means the grant of authority to perform notarial or the written evidence of authority.¹⁵ Without a commission, a lawyer is unauthorized to perform any of the notarial acts.

Clearly, for misrepresenting in the subject Deed of Absolute Sale that she was a notary public for and in Dao, Capiz, when in fact she was not, Atty. Abao further committed a form of falsehood which is undoubtedly anathema to the lawyer's oath. Atty. Abao's misdeeds run afoul of her duties and responsibilities, both as a lawyer and a notary public.

¹³ *St. Louis University Laboratory High School (SLU-LHS) Faculty and Staff v. Dela Cruz*, 531 Phil. 213, 226 (2006); *Zaballero v. Atty. Montalvan*, 473 Phil. 18, 24 (2004).

¹⁴ *Supra* note 2.

¹⁵ *Japitana v. Atty. Parado*, 779 Phil. 182, 188 (2016).



By performing notarial acts without the necessary commission from the court, Atty. Abao violated not only her oath to obey the laws, particularly the Rules on Notarial Practice, but also Canons 1 and 7 of the Code of Professional Responsibility which proscribes all lawyers from engaging in unlawful, dishonest, immoral or deceitful conduct and directs them to uphold the integrity and dignity of the legal profession, at all times.¹⁶

In the case of *Nunga v. Atty. Viray*,¹⁷ the Court appropriately held that where the notarization of a document is done by a member of the Philippine Bar at a time when he has no authorization or commission to do so, the offender may be subjected to disciplinary action. For one, performing a notarial [act] without such commission is a violation of the lawyer's oath to obey the laws, more specifically, the Notarial Law. Then, too, by making it appear that he is duly commissioned when he is not, he is, for all legal intents and purposes, indulging in deliberate falsehood, which the lawyer's oath similarly proscribes. These violations fall squarely within the prohibition of Rule 1.01 of Canon 1 of the Code of Professional Responsibility, which provides: "A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct."¹⁸

In a number of cases, the Court has subjected lawyers to disciplinary action for notarizing documents outside their territorial jurisdiction or with an expired commission. In *Zoreta v. Atty. Simpliciano*,¹⁹ the respondent was, likewise, suspended from the practice of law for a period of two (2) years and was permanently barred from being commissioned as a notary public for notarizing several documents after the expiration of his commission. In the case of *Judge Laquindanum v. Atty. Quintana*,²⁰ the Court suspended a lawyer for six (6) months and was disqualified from being commissioned as notary public for a period of two (2) years, because he notarized documents outside the area of his commission, and with an expired commission. In the more recent case of *Japitana v. Atty. Parado*,²¹ following the Court's pronouncements in *Re: Violation of Rules on Notarial Practice*,²² the lawyer was suspended for two (2) years from the practice of law and forever barred from becoming a notary public when he notarized documents with no existing notarial commission.

¹⁶ See *Re: Violation of Rules on Notarial Practice*, 751 Phil. 10, 16 (2015).

¹⁷ 366 Phil. 155 (1999).

¹⁸ *Id.* at 161.

¹⁹ 485 Phil. 395, 406 (2004).

²⁰ 608 Phil. 727, 739 (2009).

²¹ *Supra* note 15, at 191.


²² *Supra* note 16, at 17.

Considering that Atty. Abao has been proven to have performed notarial work in Dao, Capiz, without the requisite commission, the Court finds the recommended penalty insufficient. Likewise, Atty. Abao's assertion of old age and sickness fails to convince, considering that at the time of the commission of the unauthorized act of notarizing, she was only fifty-four (54) years old. Instead, Atty. Abao must be barred from being commissioned as notary public permanently and suspended from the practice of law for a period of two (2) years.²³

WHEREFORE, respondent Atty. Nelly E. Abao is found **GUILTY** of malpractice as a notary public, and violating the lawyer's oath as well as Rule 1.01, Canon 1 of the Code of Professional Responsibility. Accordingly, she is **SUSPENDED** from the practice of law for two (2) years and **BARRED PERMANENTLY** from being commissioned as Notary Public, effective upon her receipt of a copy of this Decision.

Let copies of this Decision be furnished all the courts of the land through the Office of the Court Administrator, the Integrated Bar of the Philippines, the Office of the Bar Confidant, and be recorded in the personal files of Atty. Abao.

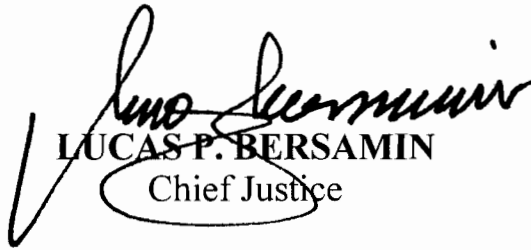
SO ORDERED.

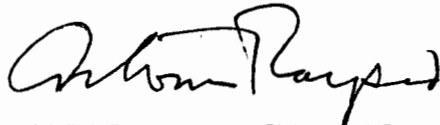

DIOSDADO M. PERALTA
Associate Justice

²³

Re: Violation of Rules on Notarial Practice, supra note 16, at 17.

WE CONCUR:


LUCAS P. BERSAMIN
Chief Justice

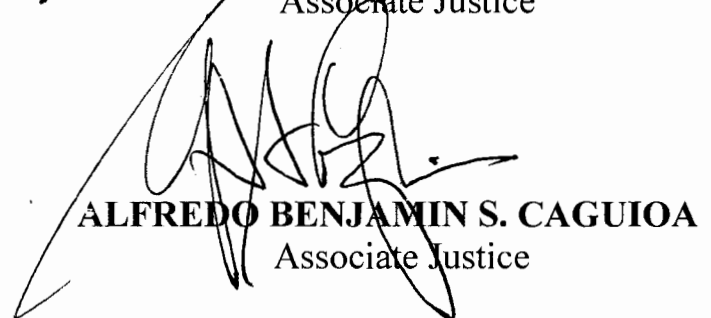

ANTONIO T. CARPIO
Associate Justice

On wellness leave
MARIANO C. DEL CASTILLO
Associate Justice

On leave
ESTELA M. PERLAS-BERNABE
Associate Justice

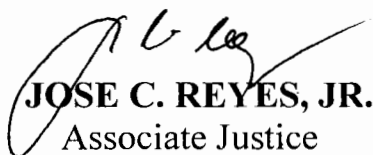

MARVIC MARIO VICTOR F. LEONEN
Associate Justice


On wellness leave
FRANCIS H. JARDELEZA
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


ANDRES B. REYES, JR.
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice

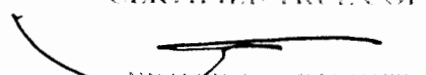

JOSE C. REYES, JR.
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice


ROSMARI D. CARANDANG
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice

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EDGAR O. ARCHETA
Clerk of Court En Banc
Supreme Court